

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Nov 12, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KAIN B., O/B/O JEFF B. (deceased),

No.1:19-CV-03285-JTR

Plaintiff,

v.

ANDREW SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

Defendant.

BEFORE THE COURT are cross-motions for summary judgment. ECF Nos. 13, 14. Attorney D. James Tree represents Kain B. (Plaintiff)<sup>1</sup>; Special Assistant United States Attorney L. Jamala Edwards represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

<sup>1</sup> Jeff B. passed away in March, 2016. Tr. 1307. His next of kin, Kain B., was substituted as the party in interest before the Agency. Tr. 947. The Court will refer to both Jeff and Kain as "Plaintiff."

## 1 JURISDICTION

2 Plaintiff filed applications for Supplemental Security Income (SSI) and  
3 Disability Insurance Benefits (DIB) on February 27, 2013, alleging disability since  
4 May 10, 2012, due to Type I diabetes, seizure disorder, kidney issues, depression,  
5 anxiety, and high blood pressure. Tr. 70. The applications were denied initially and  
6 upon reconsideration. Tr. 123-35, 137-54. Administrative Law Judge (ALJ)  
7 Stephanie Martz held a hearing on July 23, 2014 and heard testimony from  
8 Plaintiff and vocational expert, Trevor Duncan. Tr. 31-67. The ALJ issued an  
9 unfavorable decision on August 5, 2014. Tr. 15-25. The Appeals Council denied  
10 review on July 8, 2015. Tr. 1-5. Plaintiff filed an action for judicial review on  
11 September 9, 2015. Tr. 864-66. This Court remanded the claim for further  
12 proceedings on September 19, 2016. Tr. 893-907.

13 On August 6, 2018, ALJ Laura Valente held a remand hearing and heard  
14 testimony from medical expert Lawrence Sherman, MD, psychological expert  
15 Ricardo Buitrago, PsyD, and vocational expert Jeff Cockrum. Tr. 806-38. The ALJ  
16 issued an unfavorable decision on September 10, 2019. Tr. 772-96. The Appeals  
17 Council did not assume jurisdiction of the case within the prescribed period, and  
18 Plaintiff filed the present action for judicial review on December 11, 2019. ECF  
19 No. 1.

## 20 STATEMENT OF FACTS

21 The facts of the case are set forth in the administrative hearing transcripts,  
22 the ALJ's decision, and the briefs of the parties. They are only briefly summarized  
23 here.

24 Plaintiff was 39 years old at the alleged date of onset. Tr. 209. Plaintiff  
25 completed his GED in 2004. Tr. 237. His work history includes various restaurant  
26 jobs including serving, hosting, and dishwashing, convenience store clerk, and deli  
27 seafood worker. Tr. 38-39, 237. Plaintiff testified at his first hearing that he  
28

1 stopped working due to his conditions. Tr. 37. Plaintiff passed away in March  
 2 2016. Tr. 1307.

### 3 STANDARD OF REVIEW

4 The ALJ is responsible for determining credibility, resolving conflicts in  
 5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
 6 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
 7 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
 8 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
 9 only if it is not supported by substantial evidence or if it is based on legal error.  
 10 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 11 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 12 1098. Put another way, substantial evidence is such relevant evidence as a  
 13 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
 14 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
 15 rational interpretation, the Court may not substitute its judgment for that of the  
 16 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
 17 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
 18 administrative findings, or if conflicting evidence supports a finding of either  
 19 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 20 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
 21 supported by substantial evidence will be set aside if the proper legal standards  
 22 were not applied in weighing the evidence and making the decision. *Brawner v.*  
 23 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 24 SEQUENTIAL EVALUATION PROCESS

25 The Commissioner has established a five-step sequential evaluation process  
 26 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 27 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through  
 28 four, the burden of proof rests upon the claimant to establish a *prima facie* case of

1 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is  
2 met once a claimant establishes that a physical or mental impairment prevents the  
3 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),  
4 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds  
5 to step five, and the burden shifts to the Commissioner to show (1) the claimant  
6 can make an adjustment to other work; and (2) the claimant can perform specific  
7 jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359  
8 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an adjustment to  
9 other work in the national economy, the claimant will be found disabled. 20 C.F.R.  
10 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

11 “A finding of ‘disabled’ under the five-step inquiry does not automatically  
12 qualify a claimant for disability benefits.” *Parra v. Astrue*, 481 F.3d 742, 746 (9th  
13 Cir. 2007) (citing *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001)).  
14 When there is medical evidence of drug or alcohol addiction (DAA), the ALJ must  
15 determine whether the drug or alcohol addiction is a material factor contributing to  
16 the disability. 20 C.F.R. §§ 404.1535(a), 416.935(a). In order to determine whether  
17 DAA is a material factor contributing to the disability, the ALJ must evaluate  
18 which of the current physical and mental limitations would remain if the claimant  
19 stopped using drugs or alcohol, then determine whether any or all of the remaining  
20 limitations would be disabling. 20 C.F.R. §§ 404.1535(b)(2), 416.935(b)(2). If the  
21 remaining limitations would not be disabling, DAA is a material contributing  
22 factor to the determination of disability. *Id.* If the remaining limitations would be  
23 disabling, the claimant is disabled independent of the DAA and the addiction is not  
24 a material contributing factor to disability. *Id.* Plaintiff has the burden of showing  
25 that DAA is not a material contributing factor to disability. See *Parra*, 481 F.3d at  
26 748.

27       ///

28       ///

## 1 ADMINISTRATIVE DECISION

2 On September 10, 2019, the ALJ issued a decision finding Plaintiff was not  
3 disabled as defined in the Social Security Act.

4 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
5 activity since May 10, 2012, the alleged onset date. Tr. 775.

6 At step two, the ALJ determined Plaintiff had the following severe  
7 impairments: Type 1 diabetes mellitus, heroin use disorder, methamphetamine use  
8 disorder, cannabis dependence disorder, alcohol use disorder, depressive disorder,  
9 anxiety disorder, and personality disorder. *Id.*

10 At step three, the ALJ found Plaintiff did not have an impairment or  
11 combination of impairments that met or medically equaled the severity of one of  
12 the listed impairments. Tr. 776-78.

13 The ALJ assessed Plaintiff's residual functional capacity and determined he  
14 could have performed work at a light exertional level with the following  
15 limitations:

16 He would need to avoid concentrated exposure to hazards, such as  
17 unprotected heights or moving machinery. He would need to abstain  
18 from driving trucks. He was capable of understanding and carrying out  
19 simple routine tasks. He could have occasional contact with coworkers  
20 and with the general public. He was able to make decisions related to  
simple routine tasks. He would be absent four times per month.

21 Tr. 778.

22 At step four, the ALJ found Plaintiff was unable to perform his past relevant  
23 work as a sales clerk, dining room attendant, kitchen helper, or cashier. Tr. 780.

24 At step five, the ALJ determined that, considering Plaintiff's age, education,  
25 work experience and residual functional capacity, including the substance use  
26 disorders, there were no jobs that existed in significant numbers in the national  
27 economy that Plaintiff would have been capable of performing. Tr. 781-82.

28 Because of Plaintiff's substance abuse, the ALJ further considered his

1 abilities if he were to stop using drugs and alcohol. Tr. 782. The ALJ found  
2 Plaintiff's remaining impairments would have continued to be severe, but would  
3 not have met or medically equaled a listing. Tr. 782-83.

4 The ALJ found, if Plaintiff had stopped the substance abuse, he would have  
5 continued to be able to perform light work, and would have had the following  
6 additional limitations:

7  
8 He would need to avoid concentrated exposure to hazards, such as  
9 unprotected heights or dangerous moving machinery. He would have  
10 to abstain from driving trucks. He was capable of understanding and  
carrying out simple routine tasks.

11 Tr. 783.

12 The ALJ found if Plaintiff had stopped the substance abuse, he could have  
13 performed his past relevant work as a cashier. Tr. 794-95.

14 The ALJ finally found that, considering Plaintiff's age, education, work  
15 experience, and residual functional capacity if he had stopped using substances,  
16 there were jobs that existed in significant numbers in the national economy that he  
17 would have been capable of performing, specifically identifying the representative  
18 occupations of production assembler, assembler of electrical accessories, and  
19 routing clerk. Tr. 795.

20 The ALJ thus concluded Plaintiff's substance use disorder was a  
21 contributing factor material to the determination of disability, and thus Plaintiff  
22 was not under a disability within the meaning of the Social Security Act at any  
23 time from the alleged onset date through the date of his death. Tr. 796.

## 24 ISSUES

25 The question presented is whether substantial evidence supports the ALJ's  
26 decision denying benefits and, if so, whether that decision is based on proper legal  
27 standards.

1 Plaintiff contends the ALJ erred by (1) improperly finding substance use to  
 2 be material; (2) not properly assessing the opinion evidence; and (3) not properly  
 3 assessing Plaintiff's testimony.

4 **DISCUSSION**

5 **1. Materiality of substance abuse**

6 The Social Security Act bars payment of benefits when drug addiction and  
 7 alcoholism (DAA) is a contributing factor material to a disability claim. 42 U.S.C.  
 8 §§ 423(d)(2)(C) & 1382(a)(3)(J); *Bustamante v. Massanari*, 262 F.3d 949 (9th Cir.  
 9 2001). If there is evidence from an acceptable medical source that a claimant has a  
 10 substance abuse disorder and the claimant succeeds in proving disability, the  
 11 Commissioner must determine whether DAA is *material* to the determination of  
 12 disability. 20 C.F.R. § 416.935; SSR 13-2p at ¶ 8(b)(i) (Feb. 20, 2013), *available*  
 13 at 2013 WL 621536. That is, the ALJ must perform the sequential evaluation  
 14 process a second time, separating out the impact of the claimant's DAA, to  
 15 determine if he would still be found disabled if he stopped using drugs or alcohol.  
 16 *Bustamante*, 262 F.3d at 955. DAA is a materially contributing factor if the  
 17 claimant would not meet the SSA's definition of disability if the claimant were not  
 18 using drugs or alcohol. 20 C.F.R. § 416.935(b).

19 The ALJ found that Plaintiff's substance use was material to the finding of  
 20 disability. Tr. 783. Specifically, the ALJ found that during periods of substance  
 21 abuse Plaintiff had "particular difficulty maintaining his blood-sugar levels,  
 22 complying with recommended diabetic therapy, avoiding medical complications  
 23 from diabetes, concentrating and persisting in tasks, and behaving appropriately  
 24 with others," all of which would have resulted in a disabling level of absenteeism.  
 25 Tr. 794. The ALJ found the record contained evidence related to periods of  
 26 sobriety or periods during which there was no evidence of substance use that  
 27 indicated Plaintiff would not have had the same disabling limitations. *Id.*

28 Plaintiff argues the ALJ erred in the DAA analysis in that she failed to

1 identify evidence in support of the RFC absent substance use and unduly relied on  
2 the testimony of the medical experts at the hearing, who testified they were  
3 unaware of any extended periods of sobriety and therefore had insufficient support  
4 for their opinions. ECF No. 13 at 3-7. Defendant argues the ALJ properly followed  
5 agency policy for evaluating the materiality of DAA and reasonably relied on the  
6 testimony of the medical experts. ECF No. 14 at 6-9.

7 The Court finds the ALJ did not err. The ALJ followed the directives of  
8 Social Security Ruling 13-2p in evaluating Plaintiff's limitations with and without  
9 the impact of DAA, and adequately explained her reliance on the testimony of the  
10 medical experts and her interpretation of the medical evidence. Tr. 778-80. Social  
11 Security Ruling 13-2p allows an ALJ to rely on an acceptable medical source's  
12 opinion regarding expected medical improvement, even when the claimant does  
13 not have a period of abstinence. SSR 13-2p ¶(6)(c)(iv). Dr. Lawrence Sherman  
14 testified that Plaintiff's substance abuse was the primary problem that contributed  
15 to the dysfunction of his diabetes, and offered medical information as to the impact  
16 on glucose levels that various substances would have. Tr. 814, 820-22. The ALJ's  
17 decision is supported by substantial evidence.

18 **2. Plaintiff's subjective reports**

19 Plaintiff alleges the ALJ improperly disregarded his subjective symptom  
20 reports. ECF No. 13 at 16-21.

21 It is the province of the ALJ to make determinations regarding a claimant's  
22 subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
23 However, the ALJ's findings must be supported by specific, cogent reasons.  
24 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant  
25 produces medical evidence of an underlying medical impairment, the ALJ may not  
26 discredit testimony as to the severity of an impairment merely because it is  
27 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.  
28 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting

1 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*  
2 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834  
3 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify  
4 what testimony is not credible and what evidence undermines the claimant's  
5 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.  
6 1993).

7       The ALJ found Plaintiff's medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms; however, she found  
9 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
10 his symptoms to be not entirely consistent with the medical evidence and other  
11 evidence in the record. Tr. 784. The ALJ found Plaintiff's allegations to be  
12 undermined by benign physical and mental status findings, Plaintiff's  
13 noncompliance with treatment, inconsistent testimony about the management of  
14 his diabetes, minimal mental health treatment, improvement with treatment,  
15 situational stressors contributing to his mental symptoms, Plaintiff's work history  
16 and receipt of unemployment benefits, evidence of symptom magnification, and  
17 inconsistent statements about his substance abuse history. Tr. 784-89.

18       Plaintiff argues the ALJ selectively and incorrectly read the record, failed to  
19 consider the full circumstances and explanations for many of the factors, and relied  
20 on insufficient evidence in finding symptom magnification. ECF No. 13 at 16-21.  
21 Defendant argues the ALJ's reasons are relevant and supported by substantial  
22 evidence. ECF No. 14 at 10-12.

23       The Court finds the ALJ offered clear and convincing reasons for  
24 discounting Plaintiff's subjective symptom reports. An ALJ may reasonably  
25 consider inconsistent statements made by a claimant in assessing his reliability.  
26 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001); *Verduzco v. Apfel*, 188  
27 F.3d 1087, 1090 (9th Cir. 1999) (conflicting or inconsistent testimony concerning  
28 alcohol or drug use can contribute to an adverse credibility finding). The ALJ

1 found Plaintiff's inconsistent statements about his substance abuse history eroded  
2 the reliability of his self-reports. Tr. 789. Her interpretation of the record as  
3 containing inconsistent reports is supported by substantial evidence.

4 An ALJ may also consider the nature of treatment sought, the effectiveness  
5 of treatments, and a claimant's compliance with treatment recommendations.  
6 Social Security Ruling 16-3p; *see also Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
7 1989); *Macri v. Chater*, 93 F.3d 540, 544 (9th Cir. 1996) (finding the ALJ's  
8 decision to reject the claimant's subjective pain testimony was supported by the  
9 fact that the claimant was not taking pain medication). The ALJ noted Plaintiff's  
10 sporadic attendance at mental health treatment and improvement with the minimal  
11 treatment he did receive. Tr. 787.

12 Although it cannot serve as the sole ground for rejecting a claimant's  
13 symptom statements, objective medical evidence is a "relevant factor in  
14 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
15 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably considered the  
16 lack of significant objective findings in the record supporting Plaintiff's allegations  
17 of disabling physical and mental impairments. Tr. 784-85, 786.

18 While Plaintiff offers a different interpretation of many of the facts, the  
19 Court finds the ALJ's interpretation is reasonable. "When the evidence is  
20 susceptible to more than one rational interpretation, we must uphold the ALJ's  
21 findings if they are supported by inferences reasonably drawn from the record."  
22 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

### 23 **3. Medical opinion evidence**

24 Plaintiff argues the ALJ failed to properly consider and weigh the medical  
25 opinions expressed by Dr. Bauman, Dr. Kunhiraman, and Dr. Crank. ECF No. 13  
26 at 8-16.

27 When a treating or examining physician's opinion is contradicted by another  
28 physician, the ALJ is required to provide "specific and legitimate reasons," based

1 on substantial evidence, to reject the opinion. *Andrews v. Shalala*, 53 F.3d 1035,  
2 1041 (9th Cir. 1995); *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The  
3 specific and legitimate standard can be met by the ALJ setting out a detailed and  
4 thorough summary of the facts and conflicting clinical evidence, stating her  
5 interpretation thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747,  
6 751 (9th Cir. 1989). The ALJ is required to do more than offer her conclusions, she  
7 “must set forth her interpretations and explain why they, rather than the doctors’,  
8 are correct.” *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988). The record  
9 contains conflicting opinions from various physicians. Compare Tr. 412-14, 1161-  
10 63, 1168-69 with Tr. 100-03, 734-39, 764-67, 814-16, 825-27, 1100-02. Therefore,  
11 the specific and legitimate standard applies.

12       **A. Dr. Bauman**

13       In November 2015, Plaintiff’s treating psychologist, David Bauman, PsyD,  
14 completed a medical source statement regarding Plaintiff’s work-related  
15 capabilities. Tr. 1161-64. He opined Plaintiff was moderately limited in a number  
16 of areas and was markedly limited in his abilities to complete a normal workweek  
17 without interruption from psychologically based symptoms, perform at a consistent  
18 pace without an unreasonable number and length of rest periods, interact  
19 appropriately with the general public, and accept instructions and respond  
20 appropriately to criticism from supervisors. Tr. 1161-62. Dr. Bauman stated that  
21 even a minimal increase in mental demands or change in environment would be  
22 predicted to cause Plaintiff to decompensate, and he predicted that Plaintiff would  
23 be off-task 21-30% of a standard workweek and would miss four or more days of  
24 work per month. Tr. 1163. He commented that Plaintiff was currently involved in  
25 residential substance abuse treatment and receiving mental health care. Tr. 1164.

26       The ALJ gave this opinion little weight, noting Dr. Bauman provided “no  
27 objective mental status findings or narrative support for his wholly conclusory  
28 opinion.” Tr. 793. The ALJ further noted the opinion was out of proportion to

1 contemporary progress notes and inconsistent with mental status findings in the  
2 record, and thus appeared to rest largely on Plaintiff's subjective reports. Tr. 793-  
3 94.

4 Plaintiff argues the ALJ erred in rejecting the opinion for lack of explanation  
5 when it was based on the doctor's significant experience and supported by records.  
6 He further argues that the ALJ failed to adequately identify what evidence  
7 contradicted the report when she failed to clarify how she distinguished periods of  
8 recent cessation of substance use. ECF No. 13 at 8-11. Defendant argues the ALJ  
9 reasonably considered the lack of narrative explanation from Dr. Bauman and the  
10 contradictory contemporaneous treatment records in assigning little weight to Dr.  
11 Bauman's report. ECF No. 14 at 13-14.

12 The Court finds no error in the ALJ's analysis. An ALJ may reasonably  
13 consider the supportability and consistency of an opinion. 20 C.F.R. §§  
14 404.1527(c), 416.927(c) ("The better an explanation a source provides for a  
15 medical opinion, the more weight we will give that medical opinion. . . . Generally,  
16 the more consistent a medical opinion is with the record as a whole, the more  
17 weight we will give to that medical opinion."). The ALJ accurately noted that Dr.  
18 Bauman provided no mental status findings or narrative support for his opinion. Tr.  
19 793, 1161-63. While Plaintiff argues the opinion is supported by Dr. Bauman's  
20 treatment records, his contemporaneous records contain few objective findings and  
21 indicate Plaintiff was improving during his inpatient treatment. Tr. 1187, 1190.  
22 The ALJ's analysis is supported by substantial evidence.

23 **B. Dr. Kunhiraman**

24 Plaintiff's treating endocrinologist, Dr. Kunhiraman, completed a medical  
25 source statement in November 2015, noting Plaintiff's diagnosis of diabetes  
26 mellitus with history of hyperglycemia. Tr. 1168. He did not believe full time work  
27 would cause Plaintiff's condition to deteriorate, though he did note work may  
28 cause Plaintiff to have low glucose if the work were physically intense. Tr. 1169.

1 With respect to missed days, Dr. Kunhiraman stated it was difficult to say how  
2 many days Plaintiff would be likely to miss, noting it could be zero or more than  
3 four, and that if he had very high glucose, he may need hospital admission. *Id.*

4 The ALJ gave this opinion little weight due to vagueness. Tr. 790. She  
5 further noted the record did not reflect any hospitalizations for glucose problems  
6 other than in December 2012, when Plaintiff was using drugs. Tr. 790-91.

7 Plaintiff argues the record contains many instances of erratic blood sugar  
8 readings that could have justified hospitalization, and notes that at the time of  
9 Plaintiff's 2012 hospitalization he only tested positive for marijuana. ECF No. 13  
10 at 12. Defendant argues the ALJ legitimately found the opinion to be vague, as the  
11 doctor failed to offer a concrete answer as to how many days Plaintiff would be  
12 expected to miss work. ECF No. 14 at 15. Defendant also argues the ALJ  
13 legitimately considered the fact that Plaintiff had not been hospitalized other than  
14 the single event. *Id.*

15 The Court finds no error in the ALJ's treatment of this opinion. An ALJ is  
16 not required to specifically credit or reject a doctor's opinion when it does not  
17 include opinions as to specific functional limitations. *Valentin v. Comm'r Soc. Sec.*  
18 *Admin.*, 574 F.3d 685, 691-92 (9th Cir. 2009). The doctor did not assess any  
19 specific functional limits with respect to missed days, saying it was difficult to say.  
20 Tr. 1169. The ALJ considered the record, which included only a single  
21 hospitalization for erratic glucose. As Dr. Kunhiraman seemed to indicate  
22 hospitalizations would contribute to potential missed days, the fact that Plaintiff  
23 did not require hospitalization at any point other than December 2012 was a  
24 reasonable factor for the ALJ to consider. The ALJ's analysis is sufficient.

25 **C. Dr. Crank**

26 In 2013, Dr. Jeremiah Crank completed a DSHS physical functional  
27 evaluation. Tr. 412-20. He listed Plaintiff's primary problem as "very difficult to  
28 control diabetes," noting his history of multiple hospitalizations for diabetic

1 ketoacidosis. Tr. 412. He opined Plaintiff was markedly limited in all areas of  
2 physical functioning and was unable to meet the demands of even sedentary work,  
3 due to an inability to predict his hypoglycemia episodes and seizures. Tr. 413-14.

4       The ALJ gave this opinion little weight, finding it to be inconsistent with the  
5 record as a whole and not well-supported. Tr. 791. The ALJ noted Dr. Crank's  
6 contemporaneous physical exam findings were normal, and found the doctor  
7 offered no explanation or support as to the basis for the limitations. *Id.* She  
8 additionally found the opinion was inconsistent with later records, which  
9 documented no episodes of seizures or hospitalizations after December 2012 and  
10 largely normal objective findings in the record. *Id.* Finally, the ALJ noted Plaintiff  
11 testified his problem was primarily high blood sugar, not low, that he had looked  
12 for work during the relevant period and would have taken it had it been offered,  
13 and that he had worked for many years with his diabetes diagnosis, including  
14 throughout the period where he experienced numerous hospitalizations. *Id.*

15       Plaintiff argues the doctor's opinion was based on Plaintiff's episodes of  
16 labile diabetes and not his physical functioning at the specific time of the exam,  
17 and thus the ALJ's rationale was insufficient. ECF No. 13 at 14. He further argues  
18 the ALJ improperly interpreted the record regarding Plaintiff's work history and  
19 testimony. *Id.* at 15-16. Defendant asserts the ALJ reasonably found the opinion to  
20 be inconsistent with the records and lacking in explanation and support for the  
21 extent of the limits assessed. ECF No. 14 at 16-17.

22       The Court finds the ALJ did not err. An ALJ may legitimately consider an  
23 opinion's consistency with the record as a whole. 20 C.F.R. §§ 404.1527(c),  
24 416.927(c). Dr. Crank's opinion was largely based on Plaintiff's past  
25 hospitalizations and seizures; however, the record for the relevant period contained  
26 only one hospitalization. Tr. 320-23. Despite Plaintiff continuing to have highs and  
27 lows in his blood sugar readings, he did not require hospitalization after December  
28 2012, and he reported no further seizure activity. Therefore, the ALJ's

1 interpretation of the record as inconsistent with Dr. Crank's opinion is supported  
2 by substantial evidence.

3 An ALJ may also consider the amount of explanation and support for an  
4 opinion. 20 C.F.R. §§ 404.1527(c), 416.927(c). The ALJ found Dr. Crank's  
5 opinion to be lacking in explanation for the basis for all the assessed limits, and  
6 noted that the contemporary exam notes were all normal. Tr. 417-20. While  
7 Plaintiff offers an alternative interpretation, the ALJ's interpretation is reasonable.  
8 "When the evidence is susceptible to more than one rational interpretation, we  
9 must uphold the ALJ's findings if they are supported by inferences reasonably  
10 drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).  
11 Therefore, the ALJ did not err in assigning little weight to Dr. Crank's opinion.

12 **CONCLUSION**

13 Accordingly, **IT IS ORDERED:**

14 1. Defendant's Motion for Summary Judgment, **ECF No. 14**, is

15 **GRANTED.**

16 2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**

17 The District Court Executive is directed to file this Order and provide a copy  
18 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
19 and the file shall be **CLOSED**.

20 **IT IS SO ORDERED.**

21 DATED November 12, 2020.



A handwritten signature in black ink, appearing to read "M".

22  
23  
24 JOHN T. RODGERS  
25  
26  
27  
28 UNITED STATES MAGISTRATE JUDGE